

1
2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 WILLIAM M. COX,

No. C-10-01736 EDL

10 Plaintiff,

**REPORT AND RECOMMENDATION
RE: APPLICATION TO PROCEED IN
FORMA PAUPERIS**

11 v.

12 JOSE VEGA,

13 Defendant.
14 _____/

15 Plaintiff William M. Cox filed his complaint and Application to Proceed In Forma Pauperis
16 on April 22, 2010. Plaintiff did not respond to the Clerk's Notice regarding consent or declination
17 to a magistrate judge. Because Plaintiff has not consented to this Court's jurisdiction pursuant to 28
18 U.S.C. § 636(c), the Court issues this Report and Recommendation and will reassign the case to a
19 district judge. For the reasons set forth below, the Court recommends granting Plaintiff's
20 application to proceed in forma pauperis and dismissing Plaintiff's complaint with prejudice.

21 Under 28 U.S.C. § 1915(a), "[a]ny court of the United States may authorize the
22 commencement . . . of any suit . . . without prepayment of fees and costs or security therefor, by a
23 person who makes affidavit that he is unable to pay such costs or give security therefor." In
24 reviewing an application to proceed in forma pauperis, the court may dismiss a case sua sponte if the
25 court determines that the party applying for in forma pauperis status has filed a frivolous action. 28
26 U.S.C. § 1915(e)(2); Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989). Under 28 U.S.C.
27 § 1915, a frivolous claim is one that lacks an arguable basis in either law or fact. Neitzke v.
28 Williams, 490 U.S. 319, 325 (1989). Moreover, according to Neitze, a court may dismiss an in
forma pauperis complaint sua sponte under 28 U.S.C. § 1915(d) when the claim is "fantastic or

delusional. . . .” Neitze, 490 U.S. at 328. Dismissal on these grounds is often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints. Id. at 324.


Plaintiff’s Application to Proceed In Forma Pauperis adequately alleges Plaintiff’s poverty. Plaintiff states that he is not employed, that he receives \$840.00 or \$850.00 per month in social security benefit payments, and that he has \$100 in the bank. Because Plaintiff qualifies for In Forma Pauperis status, his Application should be granted.

However, under 28 U.S.C. § 1915(e)(2)(B), the Court is required to dismiss an action that appears to be frivolous or fails to state a claim upon which relief may be granted. Here, both grounds are met. Plaintiff’s complaint is generally difficult to comprehend and consists of allegations that Defendants, the manger of a senior housing center and a doctor at a senior medical center, are terrorists. He alleges that gas was used to commit terrorist acts. Plaintiff’s complaint does not provide a basis for federal jurisdiction under 28 U.S.C. § 1331 or for diversity jurisdiction under 28 U.S.C. § 1332. In sum, Plaintiff’s complaint fails to include a “short and plain statement of the claim showing that the pleader is entitled to relief” as required by Federal Rule of Civil Procedure 8(a)(2).

Taken as a whole, Plaintiff’s complaint fails under Neitze, and fails to state any coherent claim against any Defendant. Accordingly, the Court recommends dismissing Plaintiff’s complaint with prejudice pursuant to 28 U.S.C. § 1915(e)(2).

Any party may serve and file specific written objections to this recommendation within fourteen (14) days after being served with a copy. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); Civil Local Rule 72-3. Failure to file objections within the specified time may waive the right to appeal the District Court’s order.

Dated: June 17, 2010


ELIZABETH D. LAPORTE
United States Magistrate Judge